

Upper Clark Fork River Basin Steering Committee

Meeting Summary

September 24, 2008

Introductions

Gerald Mueller, members of the Upper Clark Fork River Basin Steering Committee (Steering Committee), and others in attendance introduced themselves. Those in attendance included:

| Members | Group/Organization Represented |
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| Bob Benson | Clark Fork Coalition |
| Jim Quigley | Little Blackfoot River |
| Stan Bradshaw | Montana Trout Unlimited |
| Mike McLane | Montana Department of Fish, Wildlife and Parks |
| Doug Martin | Natural Resource Damage Program (NRD) |
| Jules Waber | Powell County |
| Jim Dinsmore | Granite Conservation District |
| Senator Dave Lewis | Lewis and Clark County/Senate District 42 |
| Marci Sheehan | Atlantic Richfield Company |
| Rep. Jon Sesso | Butte-Silverbow |

Agency Personnel

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| Jen Wilson | Montana Department of Natural Resources and Conservation |
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Public

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| Darry Barton | Clark Fork River Technical Advisory Committee |
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Staff

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| Gerald Mueller | Facilitator |
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Agenda

- Review summary of the May 20, 2008 Meeting
- Updates
 - Natural Resources Damage Program Topics
 - 2008 Warm Springs Creek Management
 - ARCO/DFWP Water Right Changes
 - DNRC Consumptive Use Methodology
 - Water Policy Interim Committee Actions
- Basin Domestic Water Supply
- Work Plan
- Public Comment
- Next Meeting

May 20, 2008, 2008 Meeting Summary

The Steering Committee made no changes to the meeting summary.

Updates

Natural Resources Damage Program (NRD) Topics

Doug Martin provided updates on the following topics.

Clark Fork River Consent Decree - The judge has signed the decree so it is now final. The clock has started for the transfer of money to the state.

2008 NRD Applications - This year the program received 12 grant applications. The total amount of funding requested was less than the \$20 million funding cap for this year, and staff recommended all applications for funding, although some were recommended with conditions. Appendix 1 contains the staff Pre-Draft Funding Recommendations. Both the Upper Clark Fork River Basin Remediation and Restoration Advisory Council (UCFRBRRAC) and the Trustee Restoration Council gave initial approval of the 12 applications, some with conditions. The applications are now subject to public comments prior to the Advisory and Trustee Councils' final grant recommendations to Governor Schweitzer for the final decisions.

Question - Has the clock started yet for the state's acceptance of the Milltown Dam water rights?

Answer - Yes, pending the governor's approval of the funding for the Milltown land purchase. Under the settlement agreement, the state has one year following the completion of the Remedial Action at Milltown or 1290 days after February 8, 2006, whichever is later, to accept the water rights. The water rights are connected to the land at Milltown Dam. Because the previous beneficial use for these rights was hydropower generation, the state will have to apply for and receive a change of use permit from the DNRC for these rights.

Question - Who is responsible for contamination caused by erosion of the banks above Duck Bridge?

Answer - Duck Bridge is just above the Milltown site. Arsenic concentrations in the Clark Fork River were higher than expected when the Milltown Dam was initially removed. The state is not responsible for activities at Milltown until restoration begins. The state is working with EPA to reduce the scouring above Duck Bridge.

Question - How have the water rights at Milltown been monitored?

Answer by Mike McLane - Detailed, long term records exist of hydropower generation at Milltown and of flow at the USGS Milltown gauge.

Question - I understand that as a part of ASARCO bankruptcy settlement, some \$17 million was set aside for cleanup of the Black Pine Combination site in Granite County. What can you tell us about this settlement?

Answer - I am not familiar with the details of this settlement, but I will ask and get back to you.

Dennis Workman's Activities - Because he is a retired state employee, the Montana Department of Fish, Wildlife and Parks (DFWP) was able to hire him for up to 90 days to study the tributaries to the upper Clark Fork River and recommend priorities for work to reconnect them with the river mainstem based on the benefits to the fishery. His work will be completed this fall. There will be a public scoping process on restoration priorities.

Westside Ditch Project Development Grant Application - The UCFRBRRAC agreed to fund this project development application, which the Steering Committee and the Westside Ditch Company co-sponsored, at the requested \$25,000 level. No further approvals are required and this project will go forward.

2008 Warm Springs Creek Management

Stan Bradshaw reported on Warm Springs Creek management this past summer. Montana Trout Unlimited has worked with ARCO for six years to maintain 40 cubic feet per second of flow at the confluence of Warm Springs Creek with the Clark Fork River. Over this period, management has improved. During 2002 through 2006, water was pumped from Silver Lake to maintain flows at the mouth of Warm Springs. Beginning in 2007, another source of water was available. ARCO and DFWP reached an agreement with Ueland Ranches and two other users to reduce their diversions from the Gardner Ditch when Warm Springs Creek flows fell below 40 cfs at near its mouth. For the last two years, the Uelands have honored this agreement, so pumping from Silver Lake was not needed. The good news this past summer is that Warm Springs Creek flows fell below 40 cfs only once. This instance probably resulted from a lack of adequate communications between DFWP and ARCO, which has been addressed. The bad news is that fish counts taken by Dennis Workman via snorkeling showed a marked drop in all age classes. This drop was not due to flow and its cause is unclear. The local DFWP biologist, Brad Liermann, has been asked to confirm this result.

ARCO/DFWP Water Right Changes

Mike McLane reported on this topic. He stated that this afternoon he will be meeting with ARCO's attorney Matt Williams to discuss the status of potential changes to water rights on Lost, Mill, Willow, and Warm Springs Creeks. ARCO and DFWP will be discussing which water right changes will be pursued by ARCO and which by DFWP. An important issue is how much of the water rights might be protected through the change process as instream flow and where that protection might occur.

DNRC Consumptive Use Methodology

Stan Bradshaw, Mike McLane and Jen Wilson discussed a proposal that DNRC is discussing for determining how much water was historically consumed in pre-1973 water rights. To grant a change in the point of diversion, place of use, or purpose of use, DNRC must find that the change would not adversely affect any existing water right. To make this finding, a key determination is that the change would not alter the timing of flows or reduce the source of supply. Before 1973, most water users did not measure their diversions or the amount of crop they produced. They do not, therefore, have good records of the amount of water they actually consumed. DNRC has based its analysis of pre-1973 water rights on an assumption of full service irrigation and an extrapolation of the crop water consumption that full service could produce. This approach has been criticized as resulting in overstated historical water use. In response, DNRC is proposing a methodology that uses local climate and precipitation data from the US Weather Service and average county crop production data from the Natural Resources Conservation Service. In its analyses, DNRC will compare older Water Resources Survey aerial photos taken during the

1940-1965 period with newer photos taken by LANDSAT, a satellite system. Crop production along with local weather data will be used in an IWR model to calculate water consumption. This approach will likely reduce the consumptive use from previous estimates for pre-1973 rights.

Relying on average county crop production statistics may penalize efficient producers and reward less efficient ones. These statistics will be particularly problematic for counties in which irrigation occurs at different elevations. Flat, lower elevation fields likely produce more crops per acre and therefore consume more water. DNRC proposes to allow change applicants to provide additional information related to their specific location.

Question - What is broken?

Answer - Using the old method created fictional historic uses that overstated historical consumption. This overstatement allowed changes to increase consumption and harm existing water users. The new method, with its imperfections, will likely improve the accuracy of consumptive use estimates and increase protection for existing users.

Question - What has been the experience over the last 12 months?

Answer - DFWP's experience has been a mixed bag. We have been pushing hard for limiting estimates of consumption to physical crop production to protect instream flow. However, the burden that DNRC has applied to instream flow has been higher than for mitigation, particularly when return flows have been a factor.

Comment - DNRC cannot calculate water consumption for every parcel. The question is, is the problem so complex and site specific that this new methodology is worth the effort.

Question - How long will it take DNRC to produce a new rule addressing historic consumptive use?

Answer - Probably on the order of a year. We have been holding a series of public meetings to discuss this issue before issuing a proposed rule.

Comment - DNRC is to be congratulated for taking the process it is following to consider the change in methodology. It is making an important effort to inform and engage the public.

Water Policy Interim Committee (WPIC) Actions

Gerald Mueller reported on the actions that WPIC took at its final meeting on September 11 and 12 using information from Holly Franz who attended the meeting. WPIC required a three quarters vote favorable vote to designate a committee bill to be introduced in the next legislative session. The final text of the bills was not available prior to this meeting, but will likely be posted on the WPIC web site. The following will be committee bills:

- LC5007 - This bill provides \$4.2 million to the Montana Bureau of Mines and Geology to conduct ground water studies in the seven high growth areas of closed basins.
- LC5009 - The bill requires discharge permits for aquifer recharge to protect water quality.

- LC5012 - This bill allows Montana Department of Transportation to have a water right permit exemption for wetland mitigation required by the federal Clean Water Act.
- LC5016 - This bill creates a permanent interim water policy committee. EQC will have two bills, one that would have an EQC subcommittee to address water policy and one similar to LC5016.
- LC5020 - This bill modifies DNRC water right approval process to allow preliminary determinations by the department and makes other changes to speed the permitting process.
- LC5021- This bill allows the Attorney General to become involved in water right enforcement.
- LC5022 - This bill allows counties to require public water and sewer systems for subdivisions with 30 or more lots.

Basin Domestic Water Supply

Basin Water Supply Survey

The University of Montana Geography Department and DNRC have not yet finalized a contract to conduct the surveys of basin municipal water supplies. The work, which will be carried out by a UM graduate student, will document the following:

- The actual developed capacity of community water systems;
- The ability of community water systems to meet current demands; and
- The ability of community water systems to meet demands of the near future.

Seeley Lake Water Rights

At the May Steering Committee meeting, Mike McLane presented a draft report on alternatives for meeting growing Seeley Lake water needs in a manner acceptable to DFWP. Mr. McLane has not yet finalized this report.

Municipal/Domestic Water Supply Paper Outline - Because the survey of basin municipal/domestic water supplies has not happened, Mr. Mueller has not done additional work on the paper on the municipal/domestic water supply in the Upper Clark Fork River basin.

Work Plan

In addition to the status of the basin communities' municipal/domestic water supplies, Steering Committee members suggested the following topics for its 2008-2009 work plan.

- "On-the-ground" challenges to water administration - Look at two or three basin drainages with water commissioners to see how water is being administered. Candidate drainages include: Flint Creek, Racetrack Creek, Dempsey Creek, Willow Creek, Nevada Creek, and Union Creek. Compare this experience with how water is administered in other states.
- Decree issue remarks - Examine the process used by the Water Court for addressing decree issue remarks. DFWP will take the lead in this effort, working with DNRC.

Public Comment

There was no public comment.

Next Meeting

The next meeting was scheduled for Friday, October 31, 2008 in Deer Lodge.

Appendix 1

Table 5-1. Summary of NRDP's Pre-Draft Funding Recommendations and Conditions

| Project | Recommended Restoration Funding | Funding Condition |
|--|---------------------------------|---|
| | | General Funding Conditions for all projects requiring: 1) NRDP's approval of the final design; and 2) that approved matching funds will apply proportionately to project implementation and require adequate documentation. |
| 1. Highly Ranked Projects Recommended for Funding: (Projects in this category are listed in alphabetical order and not in any ranking order) | | |
| Milltown Acquisition | \$ 586,200 | No additional funding conditions |
| Silver Bow Creek Greenway | \$2,173,444 | No additional funding conditions |
| Stucky Ridge/Jamison Acquisition | \$ 265,335 | that if the mineral title search indicates a third party owns a significant portion of the mineral rights and the right to surface entry, that the acquisition not go forward unless those rights are purchased by the owner and conveyed to the State or subordinated to the State's surface rights as the fee owner (i.e., no right of surface entry). |
| 2. Medium Ranked Projects Recommended for Funding: (Projects in this category are listed in alphabetical order and not in any ranking order) | | |
| Big Hole Pipeline | \$1,650,542 | No additional funding conditions |
| Butte Metering | \$ 273,600 | that Restoration Funds will reimburse B-SB for installed meters. |
| Cottonwood Creek Flow Study | \$ 90,377 | that a Restoration Fund grant application is completed for one or more of the projects to be developed via this PDG in addition to the other deliverables for this project. |
| Georgetown Lake Study | \$ 109,463 | No additional funding conditions |
| 3. Lower Ranked Projects Recommended for Funding: (Projects in this category are listed in alphabetical order and not in any ranking order) | | |
| Anaconda Waterline | \$1,742,169 | No additional funding conditions |
| Big Hole Diversion Dam | \$3,714,833 | that the NRDP approve of any changes in proposed improvements that result from the environmental assessment process. |
| Butte Nursery | \$ 801,007 | that the applicant have an end of each year progress meeting with NRDP to discuss and specifically outline the accomplishments and the next year's goals and activities and commit to incorporate NRDP recommendations into future year activities, if funding allows. |
| Butte Waterline | \$2,414,424 | No additional funding conditions |
| Vanisko Easement | \$5,655,000 | 1) that the acquisition not be consummated if the mineral title search indicates a third party owns a significant portion of the mineral rights and the right of surface entry and those rights are not subsequently purchased or subordinated to prevent future mineral development; 2) that the NRDP approve the final easement terms and other land transaction documents that remain to be completed; 3) further review by the NRDP to assure the validity of the appraised value; and 4) that the NRDP approve of the one allowed subdivision of the easement property or any future trade of the two in-holdings to the USFS. |
| Total Recommended Funding | \$19,476,394 | |